IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 289 OF 2002.

M/s. Alcon Real Estate Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, through its Chairman Shri Victor Albuquerque Velho Bldg., Panaji, Goa. ... Petitioner.

Versus

1. Asst. Registrar of Co-operative Societies, North Zone, Govt. Office Bldg. Complex, Mapusa.
2. Registrar of Co-operative Societies Govt. of Goa, Fontainhas, Panaji.
3. M/s. Aguada Homes Coop. Housing Society Ltd., Baman Wado, Candolim, represented by its Joint Secretary Shri Damian Andrade, r/o B-1, Aguada Homes, Candolim. ... Respondents.

Mr. D. Pangam, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A. Kamat, Addl. Govt. Advocate for the Respondents 1 and 2.

Mr. J. Vaz, Advocate for the Respondent No. 3.

Coram: P.V. HARDAS, J.

Date: 19th September 2002.

ORAL JUDGMENT.

Rule. By consent of parties, rule returnable forthwith.

2. This petition has been filed seeking transfer of Case No. AR/NZ/GEN/ABN Case-1/2002-2003, pending on the file of the first respondent, to any other Assistant Registrar of Co-operative Societies.

3. On 3rd June 2001, the first respondent had issued notice to the petitioner under Section 91 of the Maharashtra Co-operative Societies Act, 1962, directing the petitioner to appear before the first respondent on 2nd July 2002 for determining whether there is a dispute within the meaning of the said Section. On 2nd July 2002, the petitioner appeared and asked for time to engage an advocate and the matter came to be adjourned to 19th July 2002 by the first respondent. On 19th July 2002 the petitioner's counsel applied for copies of certain documents. The third respondent agreed to furnish the copies of the documents and, therefore, the proceedings were adjourned to 3rd September 2002. On 3rd September 2002, during the arguments, the first respondent is alleged to have informed the counsel for the petitioner that the first respondent was aware that the petitioner had committed several illegalities in the society which were not subject matter of the present proceedings. The first respondent also informed the counsel for the petitioner that the Chairman of the third respondent had already spoken to him about the alleged illegalities and "that he is going to hold against the petitioner". The petitioner has annexed at Exhibit 'D' an affidavit of the counsel who had represented the petitioner before the first respondent. The allegations in the petition are corroborated by the affidavit of the learned advocate.

4. None of the respondents have chosen to file an affidavit countering the contentions of the petitioner. A perusal of the petition itself shows that a reasonable apprehension is created in the mind of the petitioner that the first respondent has already prejudged the issue and has admitted that he would decide the proceedings against the petitioner. Justice must not only be done but must also appear to have been done. The apprehension of the petitioner is clearly well founded and particularly in the absence of any denial by the respondents, I am constrained to allow the petition. I have heard Mr. Nadkarni, the learned Advocate General for the respondents 1 and 2 and Mr. Vaz, the learned counsel for the respondent no. 3.

5. For the reasons stated above, the Writ Petition is allowed and the second respondent is directed to assign the proceedings between the petitioner and the third respondent to any other Assistant Registrar or any other authority empowered under the Act to decide the proceedings. Rule made absolute in terms of prayer clause (a) with no order as to costs.

(P.V. HARDAS)
JUDGE.

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